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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,903	12/20/2001	Nam Dinh Pham	367213-001	3219
37509	7590	05/02/2007		
DECHERT LLP P.O. BOX 10004 PALO ALTO, CA 94303			EXAMINER GREIMEL, JOCELYN	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 05/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/027,903

Applicant(s)

PHAM, NAM DINH

Examiner

Jocelyn Greimel

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This communication is in response to Applicant's Amendments and Remarks filed 23 February 2007.

### ***Status of Claims***

2. Claims 1-40 are currently pending. Claims 1-40 are currently amended. Claims 1 and 21 are independent claims.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-40 have been fully considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**6. Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rossides (US Patent No. 5,749,785) and further in view of Lange (US Patent No. 6,321,212).**

7. In reference to claims 1 and 21, Rossides discloses a method and system of administering a contract between at least two investors comprising:

- a. associating a contract with a first investor, wherein the contract is based on at least one underlying commodity having a market value and wherein the first investor does not hold the underlying commodity or agree to buy or sell the underlying commodity (abstract; col. 1-5; col.11-12);
- b. matching the contract with a second investor thereby creating an active contract, wherein the second investor does not hold the underlying commodity or agree to buy or sell the underlying commodity (abstract; col. 1-5; col.11-12);
- c. at least temporarily holding first investor funds and second investor funds associated with the contract (col. 43);
- d. determining which one of the first and second investor is to receive a payoff based on the market value of the underlying commodity upon expiration of

the contract in relation to one of a target price and a target price range (abstract; col. 1-5; col.11-12);

e. paying off one of the first and second investor upon expiration of the contract, wherein expiration of the contract is based on at least one of a deviation from a target price range and a specified maturity date (abstract; col. 1-5; col.11-12).

8. Rossides does not disclose the contracts being related to a commodity and the fixed lump-sum payoff based on the market value of the commodity. However, Lange discloses how these contracts can be set up related to commodities. Lange discloses the set-up of price ranges and market values of commodities. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the betting/wagering system disclosed in Rossides with the application to commodities as disclosed in Lange because it would create another item for users to bet on.

9. In reference to claims 2-20 and 22-40, Lange discloses a method and system of administering an investment contract between at least two investors as below. Similar items and actions may be grouped together. Lange discloses among its various embodiments:

f. wherein a price movement having a direction is defined by comparing the target price to the market value of the underlying commodity upon expiration of the contract, wherein the contract specifies an expiration date, a first and second

expected direction associated with the first and second investor and a fixed lump-sum payoff, and wherein the payoff is selectively transferred to one of the first and second investor upon expiration of the contract based on the direction of the price movement of the commodity in relation to the first and second expected direction (abstract; col. 1-5; col.11-12);

g. wherein a price movement having a number of ticks and direction is defined by comparing the target price to the market value of the underlying commodity upon expiration of the contract, wherein the contract specifies an expiration time, a first and second expected direction associated with the first and second investor and dollars per tick, and wherein the payoff is calculated and transferred to one of the first and second investor upon expiration of the contract based on the direction of the price movement, the number of ticks and the dollars per tick (abstract; col. 1-5; col.11-12);

h. wherein the contract further specifies a cap, and wherein the payoff transferred to one of the first and second investor is limited by the cap (abstract; col. 1-5; col.11-12);

i. wherein the commodity has a market value at expiration of the contract, and wherein the contract specifies an expiration date, a first target price range associated with the first investor, a second target price range associated with the second investor and a fixed lump-sum payoff, and wherein the fixed lump-sum payoff is transferred to one of the first and second investor upon expiration of the contract based on the market value of the commodity upon expiration of the

contract in relation to the first and second price ranges (abstract; col. 1-5; col.11-12);

j. wherein the fixed lump-sum payoff is transferred to the first investor if the market value of the commodity upon expiration of the contract falls within the first target price range (abstract; col. 1-5; col.11-12);

k. wherein the fixed lump-sum payoff is transferred to the second investor if the market value of the commodity upon expiration of the contract falls within the second target price range (abstract; col. 1-5; col.11-12);

l. wherein the commodity has a market value upon expiration of the contract, wherein the contract specifies an expiration date, a price range bounded by an upper cap associated with the first investor and a lower cap associated with the second investor and fixed lump-sum payoff, and wherein the fixed lump-sum payoff is transferred to one of the first and second investor based on one of the market value of the commodity upon expiration of the contract in relation to the price range (abstract; col. 1-5; col.11-12);

m. wherein the fixed lump-sum payoff is transferred to the first investor if the market value of the commodity reaches the upper cap prior to the expiration date;

i. wherein the fixed lump-sum payoff is transferred to the second investor if the market value of the commodity reaches one of the lower cap prior to the expiration date:

- ii. wherein the fixed lump-sum payoff is transferred to the first investor on the expiration date if the market value of the commodity on the expiration date falls within a portion of the price range associated with the first investor;
- iii. wherein the fixed lump-sum payoff is transferred to the second investor on the expiration date if the market value of the commodity on the expiration date falls within a portion of the price range associated with the second investor (abstract; col. 1-5; col.11-12);
- iv. wherein the commodity has a market value at expiration of the contract, and wherein the contract specifies an expiration date, a price range bounded by an upper cap associated with the first investor and a lower cap associated with the second investor, a target price and dollars-per-tick, and wherein a payoff is calculated and transferred to one of the first and second investor upon expiration of the contract based on the market value of the commodity upon expiration of the contract in relation to the price range (abstract; col. 1-5; col.11-12);
- n. wherein the payoff transferred to one of the first and second investor is limited by one of the first and second cap;
- v. wherein the payoff is transferred to the first investor if the market value of the commodity reaches the first cap prior to the expiration date;



- vi. wherein the payoff is transferred to the second investor if the market value of the commodity reaches the second cap prior to the expiration date;
- vii. wherein the payoff is transferred to the first investor on the expiration date if the market value of the commodity on the expiration date falls within a price range associated with the first investor;
- viii. wherein the payoff is calculated based on the difference between the market value of the commodity upon expiration of the contract and the target price multiplied by the dollars-per-tick;
- ix. wherein the payoff is transferred to the second investor on the expiration date if the market value of the commodity on the expiration date falls within a price range associated with the second investor;
- o. wherein the payoff is calculated based on the difference between the market value of the commodity upon expiration of the contract and the target price multiplied by the dollars-per-tick (abstract; col. 1-5; col.11-12).

10. Rossides does not disclose the contracts being related to a commodity and the fixed lump-sum payoff based on the market value of the commodity. However, Lange discloses how these contracts can be set up related to commodities. Lange discloses the set-up of price ranges and market values of commodities. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the betting/wagering system disclosed in Rossides with the application to

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commodities as disclosed in Lange because it would create another item for users to bet on.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn Greimel whose telephone number is (571) 272-3734. The examiner can normally be reached on Monday - Friday 8:30 AM - 4:30 PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jocelyn Greimel  
Examiner, Art Unit 3693  
April 26, 2007

 4/30/07  
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